LAWLER, METZGER & MILKMAN, LLC

2001 K STREET, NW
SUITE 802
WASHINGTON, D.C. 20006

A. RENEE CALLAHAN
PHONE (202) 777-7723

PHONE (202) 777-7700
FACSIMILE (202) 777-7763

September 15, 2003

By Electronic Filing

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *Ex Parte* Presentation, Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, CC Docket No. 02-33

Dear Ms. Dortch:

Attached for inclusion in the record of the above-referenced proceeding, pursuant to the Commission's rules, is a letter from Richard S. Whitt, Director, Federal Advocacy, MCI, to William F. Maher, Chief, Wireline Competition Bureau, FCC.

Sincerely,

/s/ A. Renée Callahan

A. Renée Callahan

Attachment

cc: Scott Bergmann
Matthew Brill
Michelle M. Carey
Daniel Gonzalez
Jane E. Jackson
Christopher Libertelli
William F. Maher, Jr.
Carol Mattey
Terri Natoli
John Rogovin
Jessica Rosenworcel
John P. Stanley
Lisa Zaina

Richard S. Whitt
Director, Federal Advocacy

1133 Nineteenth Street, NW
Washington, D.C. 20036
202 887-3845 (Tel.)
202 736-3304

MCI

September 15, 2003

William F. Maher
Chief, Wireline Competition Bureau
Federal Communications Commission
Washington, DC 20554

Re: Cross-Subsidy Issues in the *Broadband Framework* Proceeding

Dear Mr. Maher:

The Communications Act of 1934, as amended (Act), and the Commission's rules prohibit improper cross-subsidization.[1] In the *Broadband Framework* proceeding, the BOCs have sought to evade Section 254(k) and the operation of the Commission's cost allocation rules with respect to DSL services.[2] MCI has previously explained that, as a matter of law as well as sound public policy, the Commission must have effective cost allocation rules in place before making a determination regarding the reclassification of DSL services.[3]

BellSouth recently submitted a letter arguing that the Commission should create an exception to the FCC's rules designed to prevent cross-subsidy for DSL services. For the most part, BellSouth does not raise any arguments that have not been addressed by MCI's previous submissions. However, BellSouth does claim that, under price caps, "there is now truly no link between an increase in costs directly causing an increase in

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1 *See* 47 U.S.C. § 254(k); 47 C.F.R. § 64.901(c).

2 *See* Letter from W. Scott Randolph, Verizon, to Carol Mattey, Deputy Chief, Wireline Competition Bureau, FCC, attached to Letter from Ann D. Berkowitz, Verizon, to Marlene H. Dortch, Secretary, FCC (June 26, 2003); Letter from Cronan O'Connell, Qwest, to Marlene Dortch, Secretary, FCC (June 4, 2003); Letter from Mary Henze, BellSouth Corporation, to Marlene Dortch, Secretary, FCC (June 19, 2003). (All *ex parte* filings referenced herein were filed in CC Docket No. 02-33.)

3 Letter from Richard S. Whitt, Director, Federal Advocacy, MCI, to William F. Maher, Chief, Wireline Competition Bureau, FCC, attached to Letter from A. Renée Callahan to Marlene H. Dortch, Secretary, FCC (July 29, 2003).

prices."[4] To the extent that BellSouth is claiming that price cap regulation completely severs the link between costs and rates, BellSouth is just plain wrong. In fact, since the initiation of price caps, the Bell Operating Companies (BOCs) have been required to adjust their price indices every single year to reflect changes in their underlying costs of providing interstate regulated service. These exogenous rate adjustments have, over the past decade, totaled hundreds of millions, if not billions, of dollars.

In its July 29 letter, MCI described how, even under price cap regulation, the interstate access rates charged by the BOCs and other price cap carriers continue to be linked to cost. In its letter of August 26, BellSouth notes that the low-end adjustment is no longer available for price cap carriers with pricing flexibility, but fails to address the numerous other exogenous cost adjustments required by section 61.45(d) of the Commission's rules.[5] These adjustments include routine exogenous cost changes that the BOCs file each year, to account, for example, for changes in regulatory fees, excess deferred taxes, amortization of investment tax credit, Telecommunications Relay Services contributions and North American Numbering Plan Administration expenses.[6] In addition, BellSouth's letter makes no mention of other exogenous adjustments, which are permitted from time to time, for example, when exchanges are purchased or sold. Finally, BellSouth ignores one-time exogenous changes that the Commission occasionally may permit to take account of an extraordinary development. In recent years, these extraordinary cost changes have included an increase to reflect thousands-block number pooling costs;[7] reallocation of General Support Facilities investment expenses (some of which were reallocated to the billing and collection category, thus reducing access charges);[8] reallocation of various costs related to access reform, including line-side port costs and marketing expenses;[9] and removal of Universal Service

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4 Letter from Stephen L. Earnest, Regulatory Counsel, BellSouth, to Marlene H. Dortch, Secretary, FCC, at 4 (Aug. 26, 2003).

5 BellSouth also ignores the ability of the BOCs to file rates that exceed the applicable price indices, based on their costs. 47 C.F.R. § 61.49(d); *see also Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786, ¶¶ 300-304 (1990).

6 *See* 47 C.F.R. § 61.45(d).

7 *Numbering Resource Optimization*, Third Report and Order and Second Order on Reconsideration, 17 FCC Rcd 252, ¶ 39-40 (2001). Qwest alone estimated that its total cost recovery for thousands-block number pooling would exceed $100 million. *See* Qwest Tariff Transmittal No. 120, Chart 1 (March 18, 2002), *available at*: <http://tabb.qwest.com/PPNB.NSF/0/962dcb223650b43e87256b800073f4a6/$FILE/Charts+&+Workpapers.PDF>.

8 *Access Charge Reform*, Third Report and Order, 12 FCC Rcd 22430, ¶ 43 (1997).

9 *Access Charge Reform*, First Report and Order, 12 FCC Rcd 15982, ¶¶ 129, 323 (1997).

Fund contributions from access charges.[10] Other examples of significant exogenous cost adjustments include the completion of amortization of depreciation reserve deficiencies and equal access expenses, as well as inside wire amortizations.[11]

The effect of these changes has been substantial. Indeed, since initiation of price cap regulation in 1991, the FCC has made multiple rate adjustments totaling hundreds of millions, if not billions, of dollars based on routine, occasional, and one-time exogenous cost changes. These repeated exogenous adjustments to the indices of price cap carriers directly refute the notion that price cap regulation today completely severs any links between changes in a carrier's cost of providing interstate regulated services and the prices it may charge for those services. Clearly, even under price caps, rates continue to be adjusted for changes in the regulatory assignment of costs between the jurisdictions.

As MCI explained in its July 29 letter, Section 254(k) of the Act plainly states that the Commission is obligated to ensure that non-competitive services do not subsidize competitive services, and to establish any necessary cost allocation rules to ensure that services included in the definition of universal service bear no more than a reasonable share of joint and common costs.[12] Consequently, as long as costs are tied to rates, which is the case for both price cap carriers as well as rate-of-return carriers, Section 254(k) requires that the Commission have in place effective cost allocation rules before making a determination regarding the reclassification of DSL services.

Sincerely yours,

/s/ Richard S. Whitt

Richard S. Whitt

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10 *Access Charge Reform*, Sixth Report and Order, 15 FCC Rcd 12962, ¶ 218 (2000).

11 47 C.F.R. § 61.45(d)(1)(i), (viii)-(ix).

12 47 U.S.C. § 254(k).